

PROPOSED AMENDMENT

SENATE AMENDMENTS TO S.B. 1386

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 “Section 1. Section 13-3601, Arizona Revised Statutes, is amended to
3 read:

13-3601. Domestic violence: definition; classification;
sentencing option; arrest and procedure for
violation; weapon seizure; notice

A. "Domestic violence" means any act which is a dangerous crime against children as defined in section 13-604.01 or an offense defined in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.

2. The victim and the defendant have a child in common.

3. The victim or the defendant is pregnant by the other party.

4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.

5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.

1 B. A peace officer ~~may~~, with or without a warrant, MAY arrest a person
2 if the officer has probable cause to believe that domestic violence has been
3 committed and the officer has probable cause to believe that the person to be
4 arrested has committed the offense, whether ~~sueh THE~~ offense is a felony or a
5 misdemeanor and whether ~~sueh THE~~ offense was committed within or without the
6 presence of the peace officer. In cases of domestic violence involving the
7 infliction of physical injury or involving the discharge, use or threatening
8 exhibition of a deadly weapon or dangerous instrument, the peace officer
9 shall arrest a person, with or without a warrant, if the officer has probable
10 cause to believe that the offense has been committed and the officer has
11 probable cause to believe that the person to be arrested has committed the
12 offense, whether ~~sueh THE~~ offense was committed within or without the
13 presence of the peace officer, unless the officer has reasonable grounds to
14 believe that the circumstances at the time are such that the victim will be
15 protected from further injury. Failure to make an arrest does not give rise
16 to civil liability except pursuant to section 12-820.02. In order to arrest
17 both parties, the peace officer shall have probable cause to believe that
18 both parties independently have committed an act of domestic violence. An
19 act of self-defense that is justified under chapter 4 of this title is not
20 deemed to be an act of domestic violence. The release procedures available
21 under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not
22 applicable to arrests made pursuant to this subsection.

23 C. A peace officer may question the persons who are present to
24 determine if a firearm is present on the premises. On learning or observing
25 that a firearm is present on the premises, the peace officer may temporarily
26 seize the firearm if the firearm is in plain view or was found pursuant to a
27 consent to search and if the officer reasonably believes that the firearm
28 would expose the victim or another person in the household to a risk of
29 serious bodily injury or death. A firearm that is owned or possessed by the
30 victim shall not be seized unless there is probable cause to believe that
31 both parties independently have committed an act of domestic violence.

1 D. If a firearm is seized pursuant to subsection C of this section,
2 the peace officer shall give the owner or possessor of the firearm a receipt
3 for each seized firearm. The receipt shall indicate the identification or
4 serial number or other identifying characteristic of each seized
5 firearm. Each seized firearm shall be held for at least seventy-two hours by
6 the law enforcement agency that seized the firearm.

7 E. If a firearm is seized pursuant to subsection C of this section,
8 the victim shall be notified by a peace officer before the firearm is
9 released from temporary custody.

10 F. If there is reasonable cause to believe that returning a firearm to
11 the owner or possessor may endanger the victim, the person who reported the
12 assault or threat or another person in the household, the prosecutor shall
13 file a notice of intent to retain the firearm in the appropriate superior,
14 justice or municipal court. The prosecutor shall serve notice on the owner
15 or possessor of the firearm by certified mail. The notice shall state that
16 the firearm will be retained for not more than six months following the date
17 of seizure. On receipt of the notice, the owner or possessor may request a
18 hearing for the return of the firearm, to dispute the grounds for seizure or
19 to request an earlier return date. The court shall hold the hearing within
20 ten days after receiving the owner's or possessor's request for a
21 hearing. At the hearing, unless the court determines that the return of the
22 firearm may endanger the victim, the person who reported the assault or
23 threat or another person in the household, the court shall order the return
24 of the firearm to the owner or possessor.

25 G. A peace officer is not liable for any act or omission in the good
26 faith exercise of the officer's duties under subsections C, D, E and F of
27 this section.

28 H. Each indictment, information, complaint, summons or warrant that is
29 issued and that involves domestic violence ~~shall~~ MAY state that the offense
30 involved domestic violence and ~~shall~~ MAY be designated by the letters DV. A
31 domestic violence charge shall not be dismissed or a domestic violence
32 conviction shall not be set aside for failure to comply with this subsection.

1 I. A person who is arrested pursuant to subsection B of this section
2 may be released from custody in accordance with the Arizona rules of criminal
3 procedure or any other applicable statute. Any order for release, with or
4 without an appearance bond, shall include pretrial release conditions that
5 are necessary to provide for the protection of the alleged victim and other
6 specifically designated persons and may provide for additional conditions
7 that the court deems appropriate, including participation in any counseling
8 programs available to the defendant.

9 J. When a peace officer responds to a call alleging that domestic
10 violence has been or may be committed, the officer shall inform in writing
11 any alleged or potential victim of the procedures and resources available for
12 the protection of ~~such~~ THE victim including:

13 1. An order of protection pursuant to section 13-3602, an injunction
14 pursuant to section 25-315 and an injunction against harassment pursuant to
15 section 12-1809.

16 2. The emergency telephone number for the local police agency.

17 3. Telephone numbers for emergency services in the local community.

18 K. A peace officer is not civilly liable for noncompliance with
19 subsection J of this section.

20 L. An offense that is included in domestic violence carries the
21 classification prescribed in the section of this title in which the offense
22 is classified. If the defendant committed a felony offense listed in
23 subsection A of this section against a pregnant victim and knew that the
24 victim was pregnant or if the defendant committed a felony offense causing
25 physical injury to a pregnant victim and knew that the victim was pregnant,
26 the maximum sentence otherwise authorized shall be increased by up to two
27 years.

28 M. If the defendant is found guilty of a first offense included in
29 domestic violence, the court shall provide the following written notice to
30 the defendant:

31 You have been convicted of an offense included in domestic
32 violence. You are now on notice that:

1 1. If you are convicted of a second offense included in
2 domestic violence, you may be placed on supervised probation and
3 may be incarcerated as a condition of probation.

4 2. A third or subsequent charge may be filed as a felony
5 and a conviction for that offense shall result in a term of
6 incarceration.

7 N. The failure or inability of the court to provide the notice
8 required under subsection M of this section does not preclude the use of the
9 prior convictions for any purpose otherwise permitted.

10 Sec. 2. Emergency

11 This act is an emergency measure that is necessary to preserve the
12 public peace, health or safety and is operative immediately as provided by
13 law."

14 Amend title to conform

LINDA GRAY

2/26/08
2:45 PM
S: B0/jas